

Attachment A - Amending the City Charter for Council Vacancies

City Charter Section 404. - VACANCY – APPOINTMENT., states the following: “If a vacancy occurs among any other members of the City Council, the remaining members shall within 75 days after such occurrence appoint a qualified resident voter of the unrepresented district who shall hold office until the office is filled at the next general municipal election. If the City Council cannot agree on one person to fill the vacancy, the replacement shall be chosen by lot.”

Following the recent District 3 vacancy, there was strong sentiment from the City Council and many residents to hold a special election to fill the seat. The Charter currently does not provide the City Council with the option or flexibility to hold a special election for this purpose.

Over the last ten years, the City Council has followed the process detailed in City Charter Section 404 to fill vacancies on the Council:

- 2013 – City Council District 3
 - Councilmember Holden elected to State Assembly
 - Vacancy occurred in December 2012
 - Appointment of Joel Bryant occurred in January 2013 to serve until May 2013
- 2015 – City Council District 7
 - Councilmember Terry Tornek elected to Mayor of Pasadena
 - Vacancy occurred in May 2015
 - Appointment of Andy Wilson occurred in June 2015 to serve until May 2017
- 2020 – City Council District 5
 - Councilmember Victor Gordo elected to Mayor of Pasadena
 - Vacancy occurred in December 2020
 - Appointment of Jess Rivas occurred in February 2021 to serve until December 2022
- 2022 – City Council District 3
 - Councilmember John Kennedy passed away in July 2022
 - Two vacancies occurred due to Councilmember Kennedy’s successful re-election to his District 3 seat in the June 2022 Primary Municipal Election
 - 1st Vacancy - Appointment of Justin Jones occurred in September 2022 to serve the remaining term ending December 2022
 - 2nd Vacancy - Appointment of Justin Jones occurred in December 2022 to serve a two-year term until next municipal election cycle with the appointment term ending in December 2024.

City staff reviewed provisions of nine other charter cities to review how vacancies are handled (via appointment or special election), and where options exist for a special election, the charter language used to govern such a process. In general, most charter cities do have the option for the City Council to **either** appoint or call a special election. For example, a number of cities allow for a special election if the City Council fails to appoint a replacement within 30 or 60 days of the vacancy occurring. Other cities

require a special election to be held **unless** the vacancy occurs within a certain timeframe prior to the next regular municipal election, or if there is less than a year remaining on the unexpired term to be filled.

Of the nine charter cities reviewed, all nine at least have the option to make an appointment to fill an unscheduled vacancy on the City Council. Of the nine, two cities do not allow for a special election to be called (similar to Pasadena, which requires the City Council to appoint). Of the remaining seven cities, three cities allow for the City Council to make the appointment if the vacancy occurs within one year of the term ending.

Another commonly used format is to set a deadline to appointment, such as within 30 or 60 days after the vacancy occurs/is declared. If the City Council does not, or cannot, act by the deadline, a special election is called. It should be noted that the majority of cities surveyed conduct plurality elections, and so, are not required to conduct a special primary and a special general election (to ensure a 50%+1 majority winner) to fill vacancies on the City Council.

Following is a table summarizing the various charter provisions of the cities reviewed:

City	Appointment	Election	Special Provisions
City of Anaheim	Yes	No	30 day residency required prior to appointment, or prior to opening of nomination period
City of Berkeley	Yes, if less than one year remaining on term, and if completed within 60 days	Yes, if no appointment made within 60 days of vacancy, and more than one year remaining on the term	Special election to occur no earlier than 60 days and no more than 90 days after order of Special Election; unless vacancy occurs not more than 180 days and not less than 80 days from the next general municipal election. In case of a tie vote, the City Council shall appoint one of the persons receiving tie vote.
City of Burbank	Yes, within 30 days of the vacancy	No	If Council fails to act, Mayor appoints.
City of Glendale	Yes, within 30 days of the vacancy	Yes, if no appointment made within 30 days of vacancy; special election to occur within 120 days of 30 day expiration; unless a regular general election will occur within 180 days	
City of Long Beach	Yes, if vacancy occurs within 120 days of a Primary Nominating Election	Yes, if outside 120 days from Primary, and called after City Council adopts resolution declaring vacancy	30 day residency required prior to appointment, or prior opening of nomination period
City of Los Angeles	Yes, at City Council discretion	Yes, at City Council discretion	Allows for filling a vacancy by appointment until the next June 30 of odd year, or through the unexpired term if filled by appointment after the start of nomination period.
City of Santa Ana	Yes, within 30 days of the vacancy	Yes, if no appointment made in 30 days	Member to be appointed must live continuously for one year prior to appointment in the ward [district] from which predecessor was elected
City of Santa Barbara	Yes, if less than one year remaining on term	Yes, if more than one year remaining on the term	Special election to occur on next regularly established general municipal, district, county, or state election date not less than 114 days from the call of the special election, unless a date for special election is selected by Council at an earlier point in time.
City of Santa Monica	Yes, within 30 days of the vacancy	Yes, if no appointment within 30 days of vacancy	
City of Pasadena	Yes	No	If City Council fails to act, vacancy filled by lot

Studying Options for Special Elections

Case Study #1: City of Santa Ana – 30-day deadline to appoint

Santa Ana City Charter Section 403: “In the event of a vacancy in the City Council, for whatever cause, the City Council shall declare the office vacant and fill the same by appointment. In each case the person so appointed shall hold office until the next general municipal election and until their successor is elected and qualified for the remainder of an unexpired term. Such appointee must, at the time of their appointment and continuously for one (1) year prior thereto, have been and be a resident of the ward [district] from which their predecessor was elected. If the City Council shall fail to fill a vacancy by appointment within thirty (30) days after such an office shall have become vacant, it shall forthwith cause an election to be held to fill such vacancy.

For the City of Santa Ana, the deadline set for the appointment is within 30 days of the declaration of vacancy. Having administered a vacancy process in accordance with Pasadena City Charter provisions, staff would recommend no less than sixty (60) days for any deadline to appoint as the minimum timeframe. This would allow for the necessary outreach and preparation for a vacancy appointment process. Even more so, in the case of an unexpected vacancy such as the death of a Councilmember, there is a period of time needed by the community, City Council, and staff to adjust and reflect on the event. Shortening the vacancy period to 30 days appears to staff to be insufficient for a complete, thorough, and respectful process.

Case Study #2: City of Santa Barbara – Election required if more than one year remains on the term

Santa Barbara City Charter Section 503: “Any vacancy on the City Council, in the office of Mayor or Councilmember, shall be filled by special election. The special election shall be called by the Council within thirty (30) days of the occurrence of such vacancy and shall be held on the next regularly established general municipal, district, county, or state election not less than 114 days from the call of the special election, unless the Council chooses to call a special election at an earlier point in time. If a vacancy on the City Council in the office of Mayor or Councilmember occurs within one year of the end of the term of office for the vacancy, the Council may make an interim appointment with no special election required.

After the special election has been called, the Council may make an interim appointment to the vacant Council district. The person appointed to fill the vacancy on an interim basis shall meet all the qualifications for such office and shall serve until the candidate elected at the special election has taken office. In addition, no interim appointee shall use any ballot designation indicating membership, former membership, or incumbency, or former incumbency on the Council or the office of Mayor, unless said person has previously been elected to the office for which membership or incumbency is claimed and the ballot designation is otherwise lawful.”

The City of Santa Barbara’s vacancy provisions have a few elements contained within the City Charter language. First, the charter requires a special election to be held to fill a vacancy for the office of the Mayor or City Council, with the date of the election to either coincide with established election dates, or to occur on an earlier election date set by the City Council. Second, the charter allows the City Council to make an appointment (forgoing the election) if the end of the unexpired term is less than one year. Third, it allows the City Council to make an appointment during the interim vacancy period prior to the special election, and sets rules regarding the ballot designation for the appointed incumbent in terms of the limiting what is allowed (e.g., appointed incumbent) and what can be use during the election.

Pros and Cons for Allowing Special Election

Just a few of the considerations that should be mentioned in moving forward with this change in the City Charter. The table of pros and cons below assumes the Council will maintain some appointment authority for specific circumstances, such as within one year of the end of term or in close proximity to the next regular municipal election cycle. Staff does not recommend the City Council forego all ability to make Councilmember appointments, when necessary, in cases where future circumstances supports that an appointment be made.

PROS	CONS
Allows for voters to elect representation for their district and issues when a vacancy occurs due to resignation, disqualification, or death	Special election schedule and voter fatigue could result in reduced voter turnout/participation when compared to regular election cycle
Provides flexibility for situations when there is a substantial amount of time remaining on an unexpired term	Increases City’s election costs with a Primary and General election process (requiring a 50%+1 majority winner)
Continues to maintain appointment authority when a vacancy occurs either at the end of a term, or within the timeframe of an upcoming regular municipal election cycle	Prior appointment processes administered by the City Council have been successfully completed

Options for City of Pasadena

If the City Council decides to put the question to voters as to whether they wish to make changes to the City Charter to allow for special elections, staff would recommend framing the proposed amendment using the City of Santa Barbara charter language as a template. This would include:

- Requiring that a vacancy on the City Council be filled by a special election
- Setting the election date on an established election date, unless the City Council acts to call the special election at an earlier point in time

- Allowing for an appointment to be made if less than a year remains on the unexpired term with no special election required
- Allowing for an interim appointment to be made after calling the special election to ensure representation for the vacant Council seat
- Requiring appointments to be made within 60 days of the vacancy occurring

If the City Council is supportive of this approach, staff can return with the appropriate proposed changes to the City Charter, along with proposed ballot question language.